

MATT BLUNT
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

*Administrative Rules Stamp

RECEIVED

JAN 23 2004

SECRETARY OF STATE
ADMINISTRATIVE RULES

A "SEPARATE" rule transmittal sheet must be used for EACH individual rulemaking.

A. Rule Number 4 CSR 240-3.435
Diskette File Name Rule 3.435 Word 2000
Name of Person to call with questions about this rule: David Meyer
Content David Meyer Phone 573-751-8706 FAX 573-751-9285
Data Entry Tammy Vieth Phone 573-751-8377 FAX Same as above
Email Address david.meyer@psc.mo.gov
Interagency Mailing Address Governor Office Building, 200 Madison St., 8th Floor, Jefferson City, MO
Statutory Authority 393.140, 393.290, 386.250 Current RSMo date 2000
Date Filed With the Joint Committee on Administrative Rules Exempt per Sections 536.024 and 536.037, RSMo 2000, and Executive Order No. 97-97 (June 27, 1997)

B. CHECK, IF INCLUDED:

- | | |
|--|---|
| <input checked="" type="checkbox"/> This transmittal completed | <input type="checkbox"/> Incorporation by reference materials, if any |
| <input checked="" type="checkbox"/> Cover letter | <input type="checkbox"/> Authority with history of the rule |
| <input checked="" type="checkbox"/> Affidavit | <input type="checkbox"/> Public cost |
| <input type="checkbox"/> Forms, number of pages <u> </u> | <input type="checkbox"/> Private cost |
| <input type="checkbox"/> Fiscal notes | <input type="checkbox"/> Hearing and comment period |

C. RULEMAKING ACTION TO BE TAKEN

- ☐ Emergency Rulemaking, (check one) ☐ rule ☐ amendment ☐ rescission ☐ termination
MUST include effective date
- ☐ Proposed Rulemaking (check one) ☐ rule ☐ amendment ☐ rescission
- ☒ Order of Rulemaking (check one) ☐ rule ☒ amendment ☐ rescission ☐ termination
MUST complete page 2 of this transmittal
- ☐ Withdrawal (check one) ☐ rule ☐ amendment ☐ rescission ☐ emergency
- ☐ Rule action notice
- ☐ In addition
- ☐ Rule under consideration

D. SPECIFIC INSTRUCTIONS: Please indicate any special instructions (e.g., publication date preference, identify material to be incorporated by reference, or forms included herein).

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RULE TRANSMITTAL (PAGE 2)

E. ORDER OF RULEMAKING: Rule Number 4 CSR 240-3.435

1a. Effective Date for the Order

☒ Statutory 30 days

Specific date _____

1b. Does the Order of Rulemaking contain changes to the rule text?

☒ YES

☐ NO

1c. If the answer is YES, please complete section F. If the answer is NO, **STOP** here.

F. Please provide a complete list of the changes in the rule text for the order of rulemaking, indicating the specific section, subsection, paragraph, subparagraph, part, etc., where each change is found. It is especially important to identify the parts of the rule that are being deleted in this order of rulemaking. This is not a reprinting of your order, but an explanation of what sections, subsections, etc. have been changed since the original proposed rule was filed.

4 CSR 240-3.435, Sections four (4) and five (5) have been modified.

In Section four (4), the sentence:

Submittals made under this section that do not include both versions will not receive confidential treatment and will be subject to public disclosure.

has been replaced with the sentences:

Submittals made under this section that do not include both versions will be considered deficient. The Staff on behalf of the Commission will issue a deficiency letter to the company and if both versions of the annual report are not received within twenty days of the notice, the submittal will be considered noncompliant.

In Section five (5), the ten (10)-day response time formerly in the following sentence has been replaced with a fifteen (15)-day response time.

The utility affected by the request may file a response to a pleading filed under these provisions within fifteen (15) days after the filing of such a pleading.

NOTE: ALL changes MUST be specified here in order for those changes to be made in the rule as published in the *Missouri Register* and the *Code of State Regulations*.

Add additional sheet(s), if more space is needed.



Commissioners

STEVE GAW
Chair

CONNIE MURRAY

ROBERT M. CLAYTON III

Missouri Public Service Commission

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DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

January 22, 2004

Hon. Matt Blunt
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Blunt,

Re: Proposed Amendment to Rule 4 CSR 240-3.435
Annual Report Submission Requirements for Steam Heating Utilities.

CERTIFICATION OF ADMINISTRATIVE RULE

I hereby certify that the attached is an accurate and complete copy of the order of rulemaking lawfully submitted by the Missouri Public Service Commission for filing on this 22nd day of January 2004.

Statutory Authority: Sections 386.250, 393.140 and 393.290 RSMo 2000.

If there are any questions, please contact:

David Meyer, Associate General Counsel
P.O. Box 360
Jefferson City, MO 65102
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david.meyer@psc.mo.gov

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 3 – Filing and Reporting Requirements

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under Sections 386.250, 393.140, and 393.290, RSMo. 2000, the Public Service Commission amends a rule as follows:

4 CSR 240-3.435 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 15, 2003 (28 MoReg 2217). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Written comments were filed with the Public Service Commission addressing the proposed amendments.

COMMENT: The Staff of the Missouri Public Service Commission expressed a concern that if a reporting public utility only submits a single, completed version of its annual report containing information it wishes to maintain as non-public, until the reporting public utility files a second, redacted version for public viewing, the version that contains the non-public information will be subject to public view.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered the comments and agrees that a change to the proposed rule is appropriate. To eliminate the concern expressed in the comment, the Commission will modify section (4) of the rule to replace the sentence:

Submittals made under this section that do not include both versions will not receive confidential treatment and will be subject to public disclosure.

with the sentences:

Submittals made under this section that do not include both versions will be considered deficient. The Staff on behalf of the Commission will issue a deficiency letter to the company and if both versions of the annual report are not received within twenty days of the notice, the submittal will be considered noncompliant.

COMMENT: Michael Pendergast, Vice President and Associate General Counsel, and Rick Zucker, Assistant General Counsel - Regulatory, of Laclede Gas Company; and Leo J. Bub, Senior Counsel, Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, filed comments suggesting that the time period allotted to a company to support the confidentiality of data filed under seal that is subject to a challenge be extended to fifteen (15) days, from the ten (10) days in the proposed rule. They suggest that ten (10) days may be inadequate for a company to respond if the challenging party transmits its pleadings via regular mail service.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered the comments and agrees that a change to the proposed rule is appropriate. Although the comments pertain to the rules for gas utilities and telecommunications companies respectively, in the interest of consistency, the Commission will apply the recommendations to this rule as well. The Commission will change the time allotted for a response to a pleading requesting an order to make information filed under seal available to the public from ten (10) days to fifteen (15) days in section (5) of the proposed rule.

COMMENT: W.R. England III and Brian McCartney, attorneys for Missouri-American Water Company, filed comments recommending that the Commission adopt the Staff of the Commission's recommendation regarding modifications to section (4) of the proposed rule, and recommending that the Commission adopt Laclede Gas Company and Southwestern Bell Telephone, L.P. d/b/a SBC Missouri's recommendations regarding section (5) of the proposed rule.

RESPONSE: Although the comments pertain to the rule for water utilities, in the interest of consistency, the Commission will apply the recommendations to this rule as well. The Commission has considered the comments and will adopt the recommended modifications as addressed above.

4 CSR 240-3.435 Annual Report Requirements for Steam Heating Utilities

(4) If a steam heating utility subject to this rule considers the information requested on the annual report form to be non-public information, it must submit both a fully completed version to be kept under seal and a redacted public version that clearly informs the reader that the redacted information has been submitted as non-public information to be kept under seal. Submittals made under this section that do not include both versions will be considered deficient. The Staff on behalf of the Commission will issue a deficiency letter to the company and if both versions of the annual report are not received within twenty days of the notice, the submittal will be considered noncompliant. In addition to the foregoing, submittals made under this section must meet the following requirements:

(A) A cover letter stating that the utility is designating some or all of the information in its annual report as confidential information, and including the name, phone number and e-mail address (if available) of the person responsible for addressing questions regarding the confidential portions of the annual report, must be submitted with the reports;

(B) The cover of each version of the report must clearly identify whether it is the public or non-public version;

(C) A detailed affidavit that identifies the specific types of information to be kept under seal, provides a reason why the specific information should be kept under seal and states that none of the information to be kept under seal is available to the public in any format must be prominently attached to both versions of the report; and

(D) Each page of each version of the report that contains non-public information shall be clearly identified as containing such information.

(5) If an entity asserts that any of the information contained in the non-public version of the annual report should be made available to the public, then that entity must file a pleading with the commission requesting an order to make the information available to the public, and shall serve a copy of the pleading on the utility affected by the request. The pleading must explain how the public interest is better served by disclosure of the information than the reason provided by the utility justifying why the information should be kept under seal. The utility affected by the request may file a response to a pleading filed under these provisions within fifteen (15) days after the filing of such a pleading. Within five (5) business days after the due date for the filing of the utility's response to a request filed under these provisions, the general counsel by filing of a pleading will make a recommendation to the commission advising whether the request should be granted.

MEMORANDUM

TO: Dale Hardy Roberts, Secretary

DATE: January 22, 2004

RE: Authorization to File Proposed Rulemaking with the Office of Secretary of State

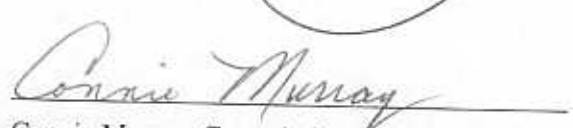
CASE NO: AX-2004-0160

The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file the following Orders of Rulemaking with the Office of Secretary of State, to wit:


- 4 CSR 240-3.165 Annual Report Submission Requirements for Electric Utilities
- 4 CSR 240-3.245 Annual Report Submission Requirements for Gas Utilities
- 4 CSR 240-3.335 Annual Report Submission Requirements for Sewer Utilities
- 4 CSR 240-3.435 Annual Report Submission Requirements for Steam Heating Utilities
- 4 CSR 240-3.540 Annual Report Submission Requirements for Telecommunications Companies
- 4 CSR 240-3.640 Annual Report Submission Requirements for Water Utilities



Steve Gaw, Chair



Connie Murray, Commissioner



Robert Clayton III, Commissioner